



Eileen W. Hollowell

Eileen W. Hollowell, Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:)	
)	Chapter 7
KELLE LEE TAYLOR,)	
)	No. 4:11-bk-06760-EWH
)	
)	
Debtor.)	
_____)	
CARLA DZURISSIN,)	
)	
Plaintiff)	No. 4:11-ap-01211-EWH
)	
v.)	
)	
KELLE LEE TAYLOR,)	
)	
Defendant.)	
_____)	

MEMORANDUM DECISION

I. INTRODUCTION

Carla Dzurissin ("Plaintiff") seeks a determination, as a matter of law, that a state-court default judgment ("Judgment") against Kelle Lee Taylor ("Defendant") enjoys preclusive effect and is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). For the reasons explained in the balance of this decision, Plaintiff's request will be denied.

1 **V. DISCUSSION**

2 Section 523(a)(2)(A) prevents a debt’s discharge when the debtor obtains money
3 by fraud, which was a finding of the Judgment. The doctrine of collateral estoppel, or
4 issue preclusion, prevents parties from relitigating settled matters, and “collateral
5 estoppel principles apply...pursuant to § 523(a)” where a creditor reduces a fraud claim
6 to a final judgment. Grogan v. Garner, 498 U.S. 279, 284 n.11, 112 L. Ed. 2d 755, 111
7 S. Ct. 654 (1991). In order to determine if the Judgment is a final judgment, and whether
8 “collateral estoppel principles apply,” the Court must look to state law because “the full
9 faith and credit statute...provides that state judicial proceedings ‘shall have the same full
10 faith and credit in every court within the United States...as they have...in the courts of
11 such State...from which they are taken.’” Gayden v. Nourbakhsh (In re Nourbakhsh), 67
12 F.3d 798, 800 (9th Cir. 1995) (citing 28 U.S.C. § 1738). Accordingly, Arizona law
13 controls.
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16 In Arizona, collateral estoppel:

17 precludes the litigation of issues previously litigated if (1) the issue was
18 actually litigated in a previous proceeding; (2) there was a valid and final
19 decision on the merits; (3) resolution of the issue was essential to the
20 decision; (4) there is common identity of the parties; and (5) there was a
21 full and fair opportunity to litigate the issue.

22 Sunkist Growers v. Fisher, 104 F.3d 280, 284 (9th Cir. 1997) (citations omitted). Arizona
23 courts hold that default judgments do not satisfy the “actually litigated” requirement.
24 See, e.g., Chaney Bldg. Co. v. City of Tucson, 148 Ariz. 571, 716 P.2d 28 (Ariz. 1986)
25 (en banc); Circle K Corp. v. Indus. Comm'n of Arizona, 179 Ariz. 422, 880 P.2d 642, 645
26 (Ariz. Ct. App. 1994). This jurisprudential convention follows the Restatement (Second)
27

1 of Judgments § 27 cmt. e (1982), which instructs that issues are not actually litigated
2 where judgment is obtained by default.

3 Under Arizona law, the Judgment was not “actually litigated” because it is a
4 default judgment and the underlying issues were not addressed. As a result, collateral
5 estoppel does not apply. Defendant’s failure to appear at a pretrial scheduling
6 conference may be grounds for entry of default in this case, but only after Defendant
7 has been given the notice required by Fed. R. Civ. P. 55, made applicable in bankruptcy
8 adversary proceedings by Fed. R. Bankr. P. 7055. Plaintiff must file an application for
9 default in compliance with Rule 55. If Defendant does not respond, default will be
10 entered. Thereafter, the Court will conduct a hearing on the amount of the damages.
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12

13 **VI. CONCLUSION**

14 For the foregoing reasons, the Court will not grant the Judgment preclusive
15 effect.

16 Dated and signed above.

17 Notice to be sent through the Bankruptcy
18 Noticing Center (“BNC”) to the following:

19 Carla Dzurissin
20 668 North 44th Street, Ste. #300
21 Phoenix, AZ 85008

22 Kelle Lee Taylor
23 30008 N. Royal Oak Way
24 Queen Creek, AZ 85143
25
26
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